D.P.U. 91-234-B

Petition of Commonwealth Electric Company and Cambridge Electric Light Company, pursuant to M.G.L. c. 164, §§ 69I, 76, 94, and 220 C.M.R. §§ 10.00 et seq., for review of the procedures by which additional energy resources are planned, solicited, and procured by Commonwealth Electric Company and Cambridge Electric Light Company.

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I. INTRODUCTION

A. Procedural History

On April 15, 1992, pursuant to the integrated resource management ("IRM") regulations,[1] Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge,") (together "the Companies"), submitted their Initial Filing to the Department of Public Utilities ("Department") and the Energy Facilities Siting Council ("Siting Council").[2] The Office of the Attorney General ("Attorney General"), Commonwealth of Massachusetts Division of Energy Resources, Conservation Law Foundation ("CLF"), Massachusetts Public Interest Research Group ("MASSPIRG"), Massachusetts Save James Bay, Boston Edison Company, Fitchburg Gas & Electric Company, Western Massachusetts Electric Company ("WMECo"), New England Cogeneration Association, Coalition of Non-Utility Generators, Inc., Burrillville Energy Corporation, CES/Way International ("CES/Way"), Massachusetts Institute of Technology and Massachusetts Restaurant Association sought and were allowed to intervene as parties in

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[1] The IRM process consists of four phases. Phase I involves the Companies' submittal of the draft initial filing and initial filing and the Department's review of those filings. Phase II is comprised of the Companies' resource solicitation process when the Companies issue a Department-approved RFP. In Phase III, the Department reviews the Companies' resource mix and award group, and, in Phase IV, the Department reviews and approves contracts resulting from the resource solicitation.

[2] The IRM process, as initially implemented, established a coordinated review of electric utility resource planning and acquisition by the Department and Siting Council. On September 1, 1992, the Siting Council was merged into the Department.

this proceeding.[3] In addition, Eastern Edison Company, Massachusetts Electric Company, Cape and Islands Self Reliance Corporation, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Local 29), and Stephen Cook on behalf of the Greater New Bedford NO-COALition sought, and were allowed to participate as interested persons.

With the Initial Filing, the Companies submitted a motion requesting an exception from certain of the IRM regulations pertaining to the requirement to issue requests for proposals ("RFPs") for demand-side management ("DSM") resources ("April 15, 1992 Motion").[4] On May 29, 1992, the Department and the Siting Council issued an Order that granted the Companies' April 15, 1992 Motion to the extent that a DSM RFP would not be required at that time, and established a schedule for the Companies' DSM solicitation.[5]

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[3] On May 9, 1994, SESCO, Inc. ("SESCO") submitted a late-filed petition to intervene as a party in these proceedings, and on May 10, 1994, the Hearing Officer allowed SESCO's petition.

[4] On April 28, 1992, the Companies, the Attorney General, CLF, MASSPIRG, CES/Way, and Northeast Utilities Service Company (for WMECo) submitted an Offer of Settlement ("Offer") intended to resolve certain issues in their Phase I IRM filing. Specifically, the Offer identified as committed, for purposes of their Phase I review, conservation and load management ("C&LM") programs being developed by a C&LM Task Force pursuant to the Department's Order in Commonwealth Electric Company/Cambridge Electric Light Company, D.P.U. 91-80 Phase Two-A (1992). The Offer also provided that a DSM RFP would not be issued in this IRM proceeding. On May 15, 1992, in a joint response, the Department and Siting Council rejected the Offer.

[5] The May 29, 1992 Order established the following schedule for a DSM RFP: (1) on July 1, 1993, the Companies would file a DSM RFP with the Department for review; (2) on November 1, 1993, the DSM RFP approved by the Department would be issued by the Companies; (3) on February 1, 1994, responses to the RFP would be due; (4) on April 1, 1994, the Companies would submit a proposed Award Group to the Department for review and approval; (5) on June 1, 1994, final Award Group

Pursuant to the schedule established for the DSM solicitation, on July 1, 1993, the Companies submitted the DSM RFP for Department review.[6] On October 22, 1993, the Department issued final Orders on its review of the Companies initial filing and DSM RFP. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234 (1993) ("D.P.U. 91-234") and Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-A (1993) ("D.P.U. 91-234-A"). On November 10, 1993, the Companies issued the Department-approved DSM RFP.[7] On April 1, 1994, the Companies submitted their Phase III Filing to the Department for review.[8]

The Department conducted a prehearing conference on April 11, 1994, and evidentiary hearings on April 19, 1994 and May 10, 1994. In support of their filing, the Companies presented the testimony of Steven L. Geller, director of demand program administration for Commonwealth; Edward J. Sayers, demand program administrator for Commonwealth; Paul A. Fiocchi, manager of demand program administrative services; and John C. Dalton, consultant with Reed Consulting Group. The evidentiary record consists of

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contracts would be submitted to the Department for review and approval; and (6) on July 1, 1994, implementation of approved programs would begin.

6 With the DSM RFP, the Companies also submitted their initial resource portfolio for demand-side resources.

7 The solicitation period for the DSM RFP extended through January 31, 1994. On January 31, 1994, the Companies submitted price components of the programs in their initial resource portfolio. On February 1, 1994, the Companies commenced a review of proposals received as a result of the DSM RFP.

8 On April 7, 1994, the Department advised the Companies that they would need to supplement their Phase III filing with the identification of an award group. On May 5, 1994, the Companies submitted a supplemental Phase III filing, which included a proposed award group.

eleven exhibits submitted by the Companies, 23 exhibits submitted by the Department, ten responses to Record Requests issued by the Department, and the response to a Record Request issued by the Attorney General. On May 10, 1994, the Hearing Officer established a briefing schedule requesting initial briefs on May 18, 1994 and reply briefs on May 20, 1994. Initial briefs were submitted by the Companies, the Attorney General, SESCO, and CES/Way. Reply briefs were submitted by the Companies, SESCO, and CES/Way.

On May 26, 1994, the Companies submitted a letter indicating that, during the contract negotiation process, a cost recovery accounting concern was identified (Companies May 26 Letter).

B. Scope of Review

In Phase III of the IRM process, the Department reviews an electric company's proposed resource plan to determine whether it is consistent with the requirements of the IRM regulations and the RFP issued by the electric company in Phase II. See 220 C.M.R. § 10.05. In Section II of this Order, the Department will review the Companies' resource selection process and the proposed award group. In Section III of this Order, the Department will review the Companies' proposed mechanisms for recovery of costs related to their DSM programs.

II. PHASE III REVIEW OF THE PROPOSED RESOURCE PLAN

A. Introduction

The IRM regulations provide for the Department to review the procedures by which additional energy resources are planned, solicited, and procured by an electric company. In Phase I of the Companies' IRM proceeding, the Department required the Companies to procure DSM resources through a competitive solicitation. See D.P.U. 91-234. In its Phase I review, the Department, among other things, approved the Companies' RFP including the identification of project selection criteria, and the appropriateness of the relative weights assigned to each of the program attributes. See D.P.U. 91-234-A.

The IRM regulations require an electric company to file its proposed resource plan with the Department. 220 C.M.R. § 10.05(2). The proposed resource plan shall describe the proposed award group and explain how these resources will meet the company's resource need and the selection criteria identified in the RFP. Id. In this Section, the Department will review the Companies' resource evaluation process and the proposed award group. In addition, pursuant to the Department's Order in D.P.U. 91-234, the Department will review an analysis of the Blackstone Street Station ("Blackstone") in order to determine whether its continued operation is consistent with least cost planning.

B. Standard of Review

In Phase III of the IRM process, the Department shall determine whether the Companies' proposed resource plan is consistent with the requirements of the IRM regulations and the DSM RFP approved in Phase I. 220 C.M.R. § 10.05. The Department shall approve the Companies' proposed award group if found to include the mix of resources

that has the highest likelihood of resulting in a reliable supply of electrical service at the lowest total cost to society. 220 C.M.R. § 10.05(3)(b). The Department may approve any portion of the projects in the Companies' proposed award group before approving all projects in the award group. The Companies may proceed to negotiate contract terms with projects on an as-approved basis. 220 C.M.R. § 10.05(3)(e).

In Phase II of the IRM process, the IRM regulations set out a six-step procedure by which electric companies must evaluate and select resources proposed in response to competitive solicitations in order to develop an award group that would be included in a company's resource plan. 220 C.M.R. § 10.04(3). First, a company must screen all proposals to ensure that they satisfy the threshold requirements identified in the RFP(s). Id. Second, a company must verify that all representations made by the project developers in their bid responses are accurate, achievable and reasonable. Id. The IRM regulations provide that a company may request additional information to verify the terms and conditions of the initial project proposal. Id. Third, a company must apply the ranking system included in the approved RFP(s) to determine the "initial ranking" of project proposals.[9] Id. Fourth, a company may revise the initial ranking if it can demonstrate that an "improved ranking" is more likely than the initial ranking to result in a reliable supply of electrical service at the lowest total cost to society.[10] Id. In D.P.U. 89-239, at 29 (1990), the

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9 The IRM regulations state than an electric company's methodology for integrating all types of resources shall be clearly articulated in the RFP(s) and shall be subject to Department review in Phase I. 220 C.M.R. § 10.03(10)(b)(1).

10 The IRM regulations specify that justification for selecting a mix of resources that deviates from that of the initial ranking shall be based on the reasons identified in the

Department indicated that this optimization phase was included "to allow electric companies to account for interactive effects, redundancy in [DSM] programs, and drastic changes in fuel prices or other relevant factors that changed since the issuance of the RFP." The Department also determined that projects ultimately must be analyzed in the context of an electric company's total resource portfolio rather than in isolation. Id. at 34. Fifth, the IRM regulations prescribe that, after the improved ranking is identified, a company shall negotiate with all of the best projects from the improved ranking in order to allow the members of that "negotiating group" the opportunity to improve their project proposals.[11] Id. Proposed price and non-price factors shall be revised through negotiations only if the final resource plan would be improved. 220 C.M.R. § 10.04(3)(e)2. Finally, a company shall determine a proposed award group to fill any resource need as identified by the Department in Phase I. 220 C.M.R. § 10.04(3)(f).

C. Proposed Award Group

1. Background on DSM RFP

Pursuant to D.P.U. 91-234-A, at 15-18 (1993), the Companies developed budgets for the DSM RFP for eight different market segments for both Cambridge and Commonwealth. The eight market segments are represented by four rate categories (residential non-electric

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RFP and on the requirements of 220 C.M.R. § 10.03(10)(d)(9), and shall be subject to Department review in Phase III. 220 C.M.R. § 10.04 (3)(d).

[11] A company must negotiate with, at a minimum, the best projects from the improved ranking that fill 130 percent of the size, in megawatts, of the largest resource need projected in any one of the first ten years of the demand and supply forecasts approved by the Department. 220 C.M.R. § 10.04(3)(e).

heat, residential electric heat, small general use and medium-large general use) and two program end-use targets (retrofit and new construction). Id. at 5. For each market segment, the DSM RFP contained specific thresholds that proposals were required to meet and the scoring criteria upon which all eligible proposals were to be evaluated.[12] Id. at 19-55. The scoring criteria include six project attributes: cost-effectiveness, program performance, marketing plan, comprehensiveness, proposer qualifications and customer contributions. Proposals were scored based on these attributes then compared to other proposals targeting the same market segments. Id.

The Companies received 63 bids including their own proposals to provide DSM services to all the market segments (Exh. C-III-1, at 8). As a proposed award group, the Companies selected 37 bid proposals, including some of their own (Exh. C-III-3, Appendix D).

2. Proposal Evaluation Process

a. Screening

i. Companies' Procedure

Upon receipt of the proposals, the Companies screened all proposals for completeness and clarity (Exh. C-III-1, at 8). The Companies developed a team approach and used checklists to facilitate the review of each proposal for these characteristics (id.).

Where clarification was necessary, the Companies contacted the bidders by letter and

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[12] The DSM RFP required all proposals to pass specific thresholds (e.g., the Department's societal cost-effectiveness test, a minimal level of monitoring and evaluation, a minimal level of comprehensiveness, etc.) depending on the type of proposal in order to be ranked in the initial and subsequent rankings. Id. at 19-55.

by telephone (id.). The Companies developed a database to track the clarification requests and the status of all clarifications (id.). As the evaluation process continued, the independent evaluator and the Companies refined the clarification process to provide a quicker response time, yet still document the bidder's responses (id.).

ii. Positions of the Parties

(A) SESCO

SESCO argues that the Companies may have allowed proposals that failed to meet mandatory comprehensiveness thresholds to compete with qualifying proposals in the initial ranking and subsequent negotiation processes (SESCO Brief at 10). SESCO notes that, pursuant to the DSM RFP, each proposal to serve the residential electric heat market was required to address a minimum of eight different end uses[13] (id.). SESCO also notes that all proposals targeting the residential electric heat market were to provide educational materials related to the eight listed end uses plus refrigerators, dryers and "other" appliances (id.).

SESCO contends that its proposal met all of the minimum requirements, which resulted in an increase in its bid price over what its price would have been had it not done so (id.). SESCO maintains that it appears that one or more of the proposals ultimately selected by the Companies may not have met the minimum threshold requirements (id.).[14] SESCO

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[13] The eight end uses targeted by the Companies' DSM RFP in the residential electric heat market were (1) attic insulation, (2) floor insulation, (3) wall insulation, (4) air sealing, (5) showerheads and aerators, (6) water heater tank wraps, (7) efficient light bulbs, and (8) thermostat setback.

[14] SESCO noted that the DSM RFP allowed proposals that "are targeted exclusively toward market driven equipment replacement decisions" and that these proposals are not required to meet the same comprehensiveness threshold (id. at 10-11, citing the

argues that retrofit programs offering improvements to the existing stock (e.g., light bulb replacements) and recycling programs to eliminate second refrigerators do not meet the definition of market driven equipment replacement (id. at 11). SESCO asserts that, by not offering a comprehensive package as required by the DSM RFP, certain bidders may have been able to offer prices lower than those submitted by bidders with comprehensive proposals. SESCO argues that the Companies should be required to eliminate from the final award group proposals that failed to meet threshold requirements as of the February 1, 1994 proposal deadline, and reevaluate all remaining bids (id.).

(B) The Companies

The Companies argue that they did not allow proposals that failed to meet comprehensiveness thresholds contained within the DSM RFP to continue in the scoring and selection processes (Companies Reply Brief at 15). The Companies note that SESCO's claims appear to be directed at the appliance recycling programs (id.). The Companies assert that these programs sufficiently satisfied the minimum thresholds for the comprehensive attribute because they would not create any lost opportunities (i.e., potential DSM implementation that is no longer cost-effective to achieve) (id.).

The Companies note that the DSM RFP stated that the minimum thresholds for the comprehensiveness attribute were "designed to avoid lost opportunities in a manner consistent with the unique service delivery approaches and economic considerations applicable to each market segment" (id., citing Exh. DPU-III-4). The Companies contend that appliance

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DSM RFP at 1.62).

recycling programs satisfied the comprehensiveness threshold because the Companies determined that a proposal could focus exclusively on removing second refrigerators without creating lost opportunities (id. at 15-16). The Companies maintain that appliance recycling programs are consistent with the DSM RFP since they would be the most cost-effective way to remove second refrigerators, and the delivery of such programs cannot easily be incorporated into the delivery of other retrofit programs (id. at 16). Therefore, the Companies argue that inclusion of the appliance recycling programs within the award group minimizes lost DSM opportunities (id. at 16).

The Companies also assert that their treatment of these proposals was consistent with guidance provided by the independent evaluator (id.). The Companies note that the independent evaluator stated in his report that "it was preferable to interpret liberally the minimum thresholds in the RFP to allow the competition inherent in the RFP process to screen out less satisfactory proposals rather than interpret the minimum thresholds overly stringently" (id.). The Companies also note that SESCO's proposal received a higher score on the comprehensiveness attribute than the appliance recycling programs due to its greater comprehensiveness, but that overall it had a lower score than competing bids (id.).

The Companies also assert that including the appliance recycling programs in the award group did not cause any other bidders to be eliminated from the award group (id.). The Companies contend that the only effect of the inclusion of the appliance recycling programs in the award group was to reduce the level of funding that would be available to the other programs in the award group (id.). Therefore, the Companies argue, the removal from the award group of appliance recycling programs would not add any more bidders to

the award group; instead, removal of the appliance recycling programs from the award group would merely cause the Companies to increase the scope and budgets of the other award group projects (id.).

iii. Analysis and Findings

The issue before the Department is whether the Companies acted appropriately when they allowed the appliance recycling programs to pass the comprehensiveness threshold and, ultimately, be incorporated in the award group. The record indicates that, with two exceptions, all proposed programs were required to address a minimum of eight end uses in the residential market segment. Pursuant to the DSM RFP, the two exceptions to the comprehensiveness threshold were for (1) programs that were targeted exclusively toward market-driven equipment replacement decisions, and (2) programs targeting the Medium/Large General Use retrofit market that could demonstrate that they would not result in lost opportunities. The record also indicates that the comprehensiveness threshold for the residential sectors indicates that all proposals would have to provide efficiency improvements in lighting, water heating (if applicable), and space heating and building envelope (if applicable).

The Department finds that the appliance recycling programs in question do not meet the comprehensiveness threshold as stated in the DSM RFP. Regarding the first exception to the comprehensiveness threshold, the record does not contain any demonstration that the appliance recycling bid proposals submitted were bids targeted exclusively toward market-driven equipment replacement decisions as defined in the DSM RFP. Therefore, the Department finds that the first exception to the comprehensiveness threshold cannot be

applied to the appliance recycling proposals. The Department further finds that the second exception to the comprehensiveness threshold does not apply to the residential market sectors. Therefore, the Department rejects the Companies application of the screening process as it relates to the appliance recycling programs, and directs the Companies to respecify the award group without the inclusion of the appliance recycling proposals.[15] The Department further directs the Companies to reallocate the budgets associated with the excluded appliance recycling programs to the remaining award group proposals in a manner consistent with the objectives of the DSM RFP and the IRM regulations. With this exception, the Department finds the Companies' screening process to be acceptable.

The Department recognizes that by adhering to the comprehensiveness threshold, the comprehensiveness of DSM services may be reduced in the affected customer sectors. However, the IRM regulations require, and the Department is committed to, the solicitation of resources through a transparent and objective process. The Department finds that the proposed modification to the comprehensiveness threshold would result in the incorporation of unnecessary subjectivity that would, over time, complicate and reduce the legitimacy of future competitive solicitations.[16] The Department directs the Companies, in designing future

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[15] In its reply brief, SESCO requested the opportunity to cross-examine on the Companies' response to DPU-III-RR-7, the Companies' representation of customers and end uses served in all residential sectors and Commonwealth's small general sector. As a result of the Department's findings, SESCO's request is moot.

[16] The Department's finding that the Companies must exclude the appliance recycling programs from their award groups does not preclude the Companies from proposing these programs for approval coincident with their Phase IV preapproval review provided that implementation of these programs does not result in CCs that exceed the approved decimal caps.

DSM RFPs, to consider provisions that allow for proposals that would benefit ratepayers but would target a specific end use only.

b. Verification

The Companies' verification procedures comprised two distinct components. The first component of the verification process was completed as part of the Companies' completeness and clarification screening procedure, as discussed above (id. at 8). In that procedure, the Companies addressed not only the completeness of proposals, but also the accuracy and reasonableness of certain representations made in the proposals (id.).

The second component of the verification process was undertaken after the initial ranking of project proposals (id. at 10). This component involved a comprehensive review of non-energy benefits claimed by bidders (id.).[17] Although such claims of non-energy benefits were credited to bidders during the first component of the verification process, the second component allowed for an evaluation of the substance and reasonableness of a particular representation (id. at 11). During this process, the number of points awarded for the claimed non-energy benefits from several proposers was reduced (id.).

The Department notes that the separation of the verification process by the Companies into two components may have resulted in inefficiencies in the proposal evaluation process; e.g., some projects became part of the initial award group based on incomplete information. Therefore, the Department directs the Companies to consider, for the purposes of their

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[17] Pursuant to the RFP, bidders were allowed to claim benefits that could be quantified and demonstrated to be significant other than electricity bill reductions (e.g., reduced maintenance costs associated with a customer's air conditioning system) within their program cost-effectiveness analyses (Exh. DPU-III-5, at 1.76).

second IRM cycle, combining the components of the verification process into the first phase of their review of bids. However, for the purposes of this proceeding, the Department finds that the Companies' verification procedures were acceptable.

c. Initial Ranking

The Companies developed attribute-specific bid evaluation teams for each of the six attributes by which proposals were to be compared under the DSM RFP (id. at 6). Each evaluation team was directed to review the specific procedures and requirements of the DSM RFP, the Department's Order in D.P.U. 91-234-A, and the IRM regulations associated with the assigned attribute (id.). The evaluation teams were also directed to compile a list of proposal review protocols (i.e., tasks and considerations necessary to review each attribute) prior to receipt of proposals (id.).[18]

The evaluation teams were also required to develop procedures for documenting the screening and evaluation processes (id. at 7). Evaluation forms were prepared for the various tasks to be performed (id.). In addition, the Companies, with the independent evaluator, developed the procedures by which the independent evaluator would document his

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[18] The Companies state that they achieved four objectives by completing the proposal review protocols prior to the receipt of proposals (id.). First, preparation and refinement of the protocols ensured that the members of each attribute team were familiar with the requirements of the RFP prior to the receipt of bids. Second, documentation of the protocols ensured that evaluation team members had identified the necessary issues for consideration. Third, development of the protocols ensured that bid proposals were scored accurately, consistently and fairly. Fourth, development of the protocols helped to identify potential difficulties in bid evaluation so that these issues could be evaluated and resolved with the independent evaluator prior to the receipt of bids, minimizing potential for bias in the evaluation process (id. at 6-7).

efforts in the proposal evaluation process (id. at 7).

The Companies then employed a consensus-based approach in assigning scores to specific proposals (id.). The scoring process began with each team member's review of the proposals (id.). The teams would then meet informally, where the teams would try to reach a consensus on the scores to be assigned to each proposal (id.). In certain instances, the independent evaluator facilitated the process of consensus building by providing guidance and suggestions to the evaluation teams (id.). The Companies then aggregated the evaluation team attribute scores to develop total scores for each proposal (id. at 10). Based on the relative scores for all proposals, an initial ranking was developed by the Companies for each market sector consistent with the available budgets established in D.P.U. 91-234-A (id.).

The Department finds that the Companies applied the initial ranking process in a manner consistent with the IRM regulations and the DSM RFP approved in D.P.U. 91-234-A. The Department finds, however, that subject to our finding in Section II.C.2.a, above, the Companies must respecify the award group, and exclude from the process the bid proposals that do not meet the Companies' comprehensiveness threshold.

d. Improving the Initial Ranking

i. Companies' Procedure

The Companies' DSM RFP indicated that, following the initial ranking of proposals, the Companies would conduct an improved ranking or "resource optimization" process in order to "address issues concerning comprehensiveness across programs and market segments; proposed programs that target overlapping customer groups and/or end uses; and the interaction of proposed programs and the Companies' generating system characteristics."

Exh. DPU-III-5, at 1.34.

Following the initial ranking described in Section II.C.2.c, above, the Companies applied an improved ranking process which included an additional review of claimed non-energy benefits (see Section II.C.2.b, above), use of the optimization process to address comprehensiveness, and application of a process referred to by the Companies as the "exceptional value test" ("EVT") (DPU-III-RR-5). The EVT involved an additional review of proposals using enhancements to the scoring mechanisms within certain attributes and the addition of a new attribute termed the "ratepayer value test" (Exh. C-III-1, at 11-12). The Companies stated that the EVT process was developed to provide a reasonable, appropriate, and reviewable process to ensure that potentially valuable resources were not excluded from negotiations by virtue of the initial ranking (DPU-III-RR-5). The Companies noted that in fact, as a result of application of the EVT process, all bidders were included in the negotiating group (id.).[19] The Companies stated that the EVT process was used only to establish the negotiating group, and was not used in the selection of award group[20] projects following the negotiation phase (see Section II.C.2.e, below) (Tr. 2, at 49-50).

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[19] The Department's regulations at 220 C.M.R. § 10.04(3)(e) require an electric company to identify a "negotiating group" comprising the best projects from the improved ranking that fill, at a minimum, 130 percent of the resource need identified in the RFP. In the instant proceeding, the Companies refer to the negotiating group as the "Final Award Negotiation Group." In this Order, we will use the term "negotiating group" consistent with the language of the Department's regulations.

[20] The Department's regulations at 220 C.M.R. § 10.04(3)(f) require an electric company to propose an "award group" in its Phase III filing. In the instant proceeding, the Companies have referred to the proposed award group identified in the May 5, 1994 filing as the "Final Award Group." In this Order, we use the term "award group" consistent with the language of the Department's regulations.

ii. Positions of the Parties

(A) CES/Way

CES/Way asserts that the Department must disregard all elements of the selection process which involved the Companies' improved ranking methodology, including the EVT or the ratepayer value test, because (1) the Companies' RFP did not include the improved ranking methodology, and (2) bidders were not aware of the mechanisms used in the improved ranking process (CES/Way Brief at 8-9). CES/Way states that the Department should reject any assertion by the Companies that the improved ranking methodology did not affect the selection of the award group, because the Companies justified the inclusion of additional bidders in the negotiating group on the basis of the EVT (id. at 9).

(B) SESCO

SESCO states that it is not clear whether or not the Companies, through the improved ranking system, ultimately used scoring provisions that differed from what was specified in the RFP (SESCO Brief at 7-8). SESCO asserts that the use of altered scoring provisions would have had a significant adverse impact on the bid proposals (id. at 8).

(C) The Companies

The Companies assert that both the DSM RFP and the Department's regulations afforded them the discretion to expand the size of the negotiating group beyond what would be required to fill 130 percent of the available budgets (Companies Brief at 14). The Companies state that they "recognized that a reasonable, appropriate and reviewable process would need to be employed in terms of exercising this discretion" (id.). The Companies assert that the EVT process was used as a reasoned, appropriate, and fully reviewable

mechanism to expand the negotiating group to increase the chances of securing greater benefits for customers through the negotiations process (id.).

iii. Analysis and Findings

The Companies have asserted that the EVT process was used only as a documentable procedure by which the negotiating group could be expanded to include all proposals that may represent exceptional value to the Companies and their customers. The Companies have indicated that, ultimately, the identified EVT process in no way affected their resource selection decisions, since all bidders obtained the opportunity to participate in the ensuing negotiation phase. The Department finds that the Companies applied the improved ranking procedures consistently to all bidders, and that no bidders were prejudiced by the use of the improved ranking process to expand the size of the negotiating group. Further, the Companies, in their Phase III filing, provided complete documentation of the process used to improve the initial ranking of the proposals received in their solicitation. Therefore, the Department finds that the Companies have sufficiently documented the process for and results of improving the initial ranking.

e. Negotiation

i. Companies' Procedure

The Companies' DSM RFP indicated that the Companies would enter into negotiations with every bidder in the negotiating group in order to achieve a set of DSM Savings Agreements that, as a whole, would meet the objectives stated in the DSM RFP (Exh. DPU-III-5, at 1.35). The RFP also indicates that the Companies would seek to reach a negotiated solution with affected parties in cases where the Companies identify a potential

for more than one bidder to target the same customers with similar DSM programs (id. at 1.35-1.36).

On April 11, 1994, the Companies issued a letter that gave all bidders in the negotiating group the opportunity to revise their project proposals in a manner that would improve the Companies' final resource plan (Exh. C-III-3, at 3, C.1). In that letter, the Companies directed bidders to consider all potential improvements to their proposals and to consider specific enhancements to the cost-effectiveness, performance, and comprehensiveness attributes; bidders were directed to submit proposed improvements by April 14, 1994 (id. at C.1). The Companies also indicated that, in the event that no proposed improvements were received, the Companies would consider the original proposal in the development of the award group (id.).

The Companies stated that a number of proposal enhancements, mostly in the price terms of project proposals, were received by the Companies on April 14 (Exh. C-III-3, at 3). The Companies then rescored the improved proposals, and reranked all proposals, based upon application of the scoring parameters contained in the Department-approved DSM RFP (id.). The Companies stated that they then applied the highest ranked proposals to the available budgets in each market segment, pursuant to the process described in the Department-approved DSM RFP (id.).

The Companies concluded that, in the medium/large general use market segments, this DSM RFP scoring process resulted in an appropriate, cost beneficial, and comprehensive mix of proposals, and that such proposals were included in the award groups for these market segments filed with the Department (id.).

The Companies further determined that, in the residential market segments, the mix of proposals resulting from the DSM RFP scoring process resulted in an unreasonably narrow set of programs, and thus did not meet the overall objectives of the DSM RFP (id. at 4). The Companies stated that, given the mix of programs, a significant number of customers in each of these market segments might not be eligible for any programs (id.). Consequently, the Companies requested that, by May 2, 1994, bidders in the residential market segments modify their proposals to reduce overall program volume while maintaining bid price (per KWH) and all other proposal attributes (id. at C.3). The Companies implemented this portion of the negotiation process with an initial round of telephone calls on April 28, 1994, confirmed by letter (id.; DPU-III-RR-6). The Companies then applied the DSM RFP proposal selection process to these further enhanced proposals, resulting in a greater number of proposals in the award groups submitted to the Department for these market segments (Exh. C-III-3, at 4). The Companies asserted that this greater number of proposals would result in the comprehensive coverage of each market segment, meeting the overall objectives of the DSM RFP (id.).

ii. Positions of the Parties

(A) CES/Way

CES/Way argues that the Department must disregard all elements of the Companies' selection and negotiations process conducted after March 31, 1994, including the addition of bidders to the negotiating group (see Section II.C.2.d.ii.(B) above) and all proposal enhancements submitted in the negotiation phase (CES/Way Brief at 6). CES/Way asserts that, by conducting substantive negotiations with project proponents after April 1, 1994, the

Companies violated the Department's regulations, the Department's Order in D.P.U. 91-234-A, and provisions of the Companies' DSM RFP, because (1) the Department's regulations at 220 C.M.R. § 10.04(3)(f) do not permit substantive negotiations after the proposed award group has been designated; (2) in D.P.U. 91-234-A at 64 the Department directed the Companies to file their proposed award group on April 1, 1994; and (3) the Companies' RFP states that the Companies will file the proposed award group with the Department on April 1, 1994 (id. at 4-5, citing Exh. DPU-III-5, at 1.36). In conclusion, CES/Way recommends that the Department find that the negotiating group comprise the award group in this proceeding (CES/Way Reply Brief at 1).

In addition, CES/Way asserts that the Companies have failed to justify the reasonableness of negotiation results pursuant to 220 C.M.R. § 10.05(2)(h), and that the Companies' negotiating process was confusing, unfair, and discriminatory to certain bidders (CES/Way Brief at 10). In support of this assertion, CES/Way argues (1) that some bidders believed that they had been selected for the award group on April 1, 1994, and that subsequent negotiations would involve only the "fine tuning" of proposals; (2) that the Companies' letter of April 11 was unclear in several ways and provided little information on expected bid enhancements; (3) that the Companies provided some bidders with more information than other bidders; (4) that the negotiation process was unnecessarily rushed; and (5) that the Companies failed to actually negotiate with all bidders (id. at 10-14). CES/Way concludes that the Department should refuse to consider the results of any and all negotiations that occurred after April 1, 1994.

Finally, CES/Way states that the Department should require the Companies to cease

contract negotiations with award group bidders until the award group is approved, because (1) this is required by 220 C.M.R. § 10.06(2), and (2) these contract negotiations could result in bias by the Companies in favor of those bidders with whom the Companies are presently negotiating (CES/Way Reply Brief at 5).

(B) SESCO

SESCO states that the Companies failed to negotiate in good faith with bidders in the negotiating group prior to selecting the award group (SESCO Brief at 5). SESCO asserts that, when it received notice on April 1, 1994 that it was included in the negotiating group, SESCO had reason to assume it had made the award group because the RFP and the Department's Order in D.P.U. 91-234-A specify that the April 1, 1994 filing shall contain the proposed award group (id. at 5-7). Assuming that it was in the award group for each residential sector, SESCO asserts that it did not want to blindly submit new bids in response to the Companies' letter of April 11, 1994 (id. at 7). SESCO asserts, however, that it clearly indicated in its original proposal and in all subsequent written communication with the Companies a willingness to negotiate any matter which would improve its proposals for ratepayers (id. at 5-7). SESCO states that as a result of the Companies' confusion surrounding the April 1, 1994 filing and the Companies' failure to negotiate individually with members of the negotiating group, bidders did not have an adequate opportunity to improve their bids during individual negotiations (id. at 7).

SESCO contends that the Companies went far beyond any reasonable interpretation in expanding the negotiating group, and that the bidders in the 130 percent negotiating group for both Cambridge and Commonwealth should be offered projects of a scope proportionate

to their size within this 130 percent group (SESCO Brief at 9). SESCO asserts that, given the comprehensiveness of end uses met by its own bid program, SESCO finds it implausible that it was necessary for the Companies to expand the award group to assure a comprehensive mix of measures (id. at 12). Further, SESCO argues that the Companies should have reduced their own new construction programs in the same proportion as the retrofit programs when expanding the award group to assure a comprehensive mix of measures (SESCO Reply Brief at 5).

SESCO argues that the Companies failed to inform SESCO that it considered the response to the April 11, 1994 "enhancements" letter as the procedure for negotiations as envisioned by the regulations or the Companies' DSM RFP (SESCO Brief at 14-15). SESCO notes that the April 11, 1994 letter only once used the word "negotiation," and that SESCO had made clear in letters to the Companies its willingness to negotiate improvements (id.).

SESCO concludes that the Companies have failed to reasonably apply the provisions of its DSM RFP with respect to the residential sectors, and that provisions of the DSM RFP were ambiguous and confused by the Companies which caused sub-optimal responses from bidders (SESCO Brief at 16). SESCO thus requests that the Department reject the proposed residential award groups, and include in the residential award groups the bidders within the April 1 negotiating group, reduced proportionately from their original proposals (id. at 16-17).[21]

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[21] SESCO requests the exclusion from the award group of any proposals that have not complied with the minimum thresholds for comprehensiveness (SESCO Initial Brief

(C) The Companies

The Companies state that the Department's regulations describing negotiation have only one substantive requirement -- that negotiating group bidders have the opportunity to revise their project proposals in a way that improves the resource plan (Companies Brief at 15). The Companies assert that the negotiation approach they adopted "satisfied the explicit requirement of the Department's regulations, was based upon a reasoned assessment of the relative abilities to offer and secure enhancements, reflected the firm schedule and was extremely successful in terms of securing benefits for customers" (id. at 17). The Companies thus request that the Department approve the Companies' negotiating strategy (id.).

The Companies assert that the additional negotiations in the residential market segments to achieve comprehensive coverage of these market segments were necessary to meet "the primary objective of the DSM solicitation announced in the May 15 Order and reaffirmed in D.P.U. 92-218: a competitive DSM solicitation … must help to ensure that cost-effective C&LM programs would be available to all customers" (emphasis in original; id. at 18). The Companies assert that this process was coordinated, documented, equitable, reflected the Department-mandated schedule and directives, and was successful (id. at 19).

The Companies assert that the Department should reject the arguments of CES/Way and SESCO because (1) CES/Way and SESCO knew or should have known the status of the Companies selection process; (2) the expectation of these bidders that the Companies would

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at 17). See Section II.C.2.a above.

conduct "face to face" negotiations is nowhere supported in the Department's regulations or the Companies DSM RFP, and should not have been inferred given the schedule; and (3) numerous other bidders understood the nature of the process and submitted enhancements (Companies Reply Brief at 3-5). The Companies assert that the Companies' correspondence and other documents could not leave bidders to conclude they were in the award group (id. at 6). The Companies note that the Department and bidders were at all times advised as to the status of the solicitation and that no bidders were given special treatment (id. at 12).

iii. Analysis and Findings

The record shows that the Companies' DSM RFP may contain some conflicting signals regarding the timing of the negotiations process and the expected content of the April 1, 1994 filing. The Companies did not submit the award group on April 1, 1994 as required by the Department. See April 7, 1994 Hearing Officer Letter. The Department notes that the development, review, and implementation of the Companies' DSM solicitation in this IRM cycle has been conducted pursuant to a procedural schedule, identified in the Department's May 29, 1992 Order, that is greatly accelerated relative to the RFP timeframe established by the Department's IRM regulations. This schedule was compressed in order to achieve implementation of DSM measures in the Companies' service territories as soon as possible. While the Companies have made a good faith effort to maintain this schedule, the Department must determine if the Companies acted reasonably within the established schedule to conduct their negotiation process, and if all bidders in the identified negotiating group were given a fair, equitable opportunity to improve their bids pursuant to the Department's regulations at 220 C.M.R. § 10.04(3)(e)2.

The Department finds that the Companies' letters of April 8, 1994 and April 11, 1994 made it clear that bidders had not yet been selected for the award group. The Companies' letter of April 11, 1994 (1) clearly indicates that the opportunity given by that letter to bidders would be the only opportunity for bidders to enhance proposals consistent with the Department's regulations at 220 C.M.R. § 10.04(3)(e); (2) explicitly states that, should enhancements not be received by the Companies by the stated deadline, proposals would be selected for the award group based on bidders' original proposals; and (3) indicates several specific areas that would be acceptable for enhancement. Therefore, the Department finds that CES/Way and SESCO were incorrect to conclude that they had already been selected for the award group, and that there would be no further substantive negotiations. The Department finds that the Companies' implementation of the negotiation process pursuant the letters of April 8, 1994 and April 11, 1994 was appropriate, consistent with the objective of the IRM negotiation phase as articulated in the Department's regulations at 220 C.M.R. § 10.04(3)(e), and was conducted in a manner that gave all bidders a fair and equal opportunity to submit proposal enhancements prior to the selection of the award group.

Further, the Department agrees with the Companies that the proposal volume reductions sought in their letter of April 28, 1994 were necessary to achieve a comprehensive mix of measures consistent with Department policies and the overall objectives of the Companies' DSM RFP. The Department finds that requesting proposal reductions from bidders in the retrofit sector only was appropriate given that (1) the Companies were seeking more comprehensive delivery of retrofit measures in the relevant market sectors, and (2) the Department's existing policy stresses the importance of implementing lost opportunities

programs, such as the Companies' new construction programs. In addition, the Department finds that the enhancements obtained by the Companies as a result of the April 28, 1994 letter achieved the objective stated by the Companies. Therefore, the Department finds that the Companies' implementation of the negotiation process pursuant to the letter of April 28 was appropriate and consistent with the Department's existing DSM policies and with the objectives of the Companies' DSM RFP.

Finally, given the compressed schedule established by the Department in the May 29, 1992 letter, the Department-approved DSM RFP provides for ongoing contract negotiations coincident with the Department's review of the Companies' proposed award group. Therefore, the Department finds that it is neither necessary nor appropriate to direct the Companies to cease contract negotiations with proposed award group bidders at this time.

The Department finds that the Companies clearly documented each step taken during the negotiation phase, and the results of the negotiation process. Accordingly, the Department finds that the Companies acted reasonably within the established schedule in conducting its negotiation process, and that all bidders in the identified negotiating group were given a fair, equitable opportunity to improve their bids pursuant to the Department's regulations at 220 C.M.R. § 10.04(3)(e)2.[22]

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[22] The Companies assert that they are actively engaged in ongoing contract negotiations with bidders in the award group (Exh. C-III-3, at 5). The Companies have stated, however, that they do not expect these ongoing contract negotiations to result in any substantive changes to project proposals (Tr. 2, at 63-65). The Department notes that 220 C.M.R. § 10.06(2) (which governs contract negotiations with award group project developers) provides that, for projects approved by the Department in Phase III of the IRM proceedings, a company shall, when filing contracts for Department approval, indicate (1) how the filed contracts differ from the Department-

f. Development of the Proposed Award Group

i. Companies' Procedure

After all negotiated proposal enhancements were received by the Companies, the Companies proceeded to develop the award group for each market segment by (1) scoring and re-ranking all proposals in each market segment based upon a strict application of the RFP scoring structure, and (2) selecting the best projects from these rankings within the Department-approved available budgets for each market segment (Exh. C-III-3, at 4). The Companies concluded that the resources selected for inclusion in the award group "are likely to secure energy savings consistent with the DSM RFP's objectives and to result in `exceptional value' for the benefit of our customers" (id. at 2).

ii. Positions of the Parties

(A) CES/Way

CES/Way asserts that, in sectors where the Companies have not utilized fully the approved budgets, the award group is in violation of the Department's Order and 220 C.M.R. § 10.04(3)(f) (CES/Way Brief at 14). CES/Way asserts that the Department should require the Companies to expand the award group to include projects up to at least 100 percent of the budgeted amounts in each sector (id. at 14-15).

(B) The Companies

The Companies assert that they satisfied all procedural requirements in terms of award group selection, exercised appropriate judgement, followed the strict application of the

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approved standard contract, and (2) how the terms of the contract vary from the terms of the project proposal approved by the Department.

DSM RFP, and responded to the Department's Order in D.P.U. 91-234-A (Companies Brief at 19; Companies Reply Brief at 14). The Companies conclude that the award group reflects a group of energy savings resources that has the highest likelihood of resulting in a reliable supply of electrical service at the lowest total cost to society (id.). The Companies request that the Department approve the award group and authorize the Companies to finalize energy savings agreements (id. at 20).

iii. Analysis and Findings

In its Order approving the Companies' DSM RFP, D.P.U. 91-234-A at 17, the Department noted that the Companies should use their discretion within the scoring criteria guidelines to procure DSM resources to the full amount of the budget in each rate category only if proposed programs, as determined through the Companies' ranking, optimization, and negotiation procedures, are likely to provide exceptional value for their customers. The Department therefore rejects the assertion of CES/Way that, by not utilizing the full budget in each rate category, the Companies' award group is in violation of the Department's Order.

The Department finds that the Companies have implemented the identification of award group projects consistent with the process described in the DSM RFP, and approved by the Department in Phase I of this proceeding.

g. Conclusions on the Proposal Evaluation Process

As discussed in Sections II.C.2.a through f above, and with the exceptions noted in Section II.C.2.a above, the Companies' implementation of each step of the proposal evaluation process was consistent with the basic resource selection format as outlined in the Department's IRM regulations and as described for bidders in the Companies' DSM RFP.

The Department found that each step of the proposal evaluation process was clearly documented in a manner consistent with the requirements of 220 C.M.R. § 10.05(2). Accordingly, the Department finds that the overall proposal evaluation process employed by the Companies was implemented in a manner consistent with the requirements and objectives of the relevant portions of the Department's IRM regulations and the Companies' DSM RFP, and was conducted in a manner that gave consistent and equitable treatment to all bidders.

3. Conclusions on the Proposed Award Group

Pursuant to the proposal evaluation process reviewed by the Department in Section II.C.2 above, the Companies identified the proposed award group by Company (Commonwealth and Cambridge) and market sector (Residential Non-Heat, Residential Heat, Small General, and Medium/Large General) (Exh. C-III-3, at D.1.). Since no bids were received for the new construction segment of any market sector, the Companies' new construction programs (as filed in the Companies' initial resource portfolio) are included in each market sector award group (id.).

The Department found in Section II.C.2.g, above, that, barring the exception to the comprehensiveness threshold in regard to the appliance recycling programs, the Companies' proposal evaluation process was implemented in a manner consistent with the requirements and objectives of the relevant portions of the Department's IRM regulations and the Companies' DSM RFP, and was conducted in a manner that gave consistent and equitable treatment to all bidders. With the exception of the bidders excluded from the proposed award group pursuant to Department findings in Section II.C.2.a, above, the Department finds that the programs included in the Companies' proposed award group for each market

segment were chosen through the proper application of the Companies' proposal evaluation process. Therefore, the Department finds that the Companies' award group as modified by this Order contains the mix of resources that has the highest likelihood of resulting in a reliable supply of electrical service at the lowest total cost to society consistent with the Companies' DSM RFP. Accordingly, the Department approves the Companies' award group as modified.

The Department notes that the Companies' May 26 Letter proposes a revised allocation of cost recovery for a limited number of proposers that, according to the Companies, will not affect the constitution of the award group. The Department directs the Companies to submit to the Department, as part of the compliance filing due no later than June 3, 1994, the respecified program budgets for all affected market segments, consistent with the revised allocation and with the Department's finding in Section II.C.2.a on the Companies' screening process.

Pursuant to 220 C.M.R. § 10.06(3), the Department will review in Phase IV final contracts reached between the Companies and award group project developers, and shall approve or disapprove the contracts. In addition, the Department will review in Phase IV all electric company resource proposals (i.e., Super Efficient Refrigerator program ("SERP") and the Companies' new construction programs), pursuant to 220 C.M.R. § 10.06(1).

D. Super Efficient Refrigerator Program

1. Companies' Proposal

Along with several other Massachusetts electric companies, the Companies began participation in the SERP in 1992 (Exh. C-III-1, at 14). SERP was developed nationally by

a consortium of electric utilities and refrigerator/freezer manufacturers to develop a highly-efficient, chloroflourocarbon-free appliance (id., app. G at 1). Through a competitive process, Whirlpool was selected to manufacture the final models of refrigerators/freezers for distribution within the participating electric companies' service territories (id.). Under SERP, the Companies will pay Whirlpool a per-unit incentive of $73.67 for each SERP refrigerator/freezer sold within their service territories (id.).

In the instant proceeding, the Companies included SERP as a component of their bids in both the residential heating and residential non-heating market segments (Exh. C-III-1, at 14). The Companies indicated that their proposals in these market segments were not included in the award groups because of the high quality of the proposals received from third party developers (id.). The Companies stated that none of the proposals in the award group would provide the unique services available under SERP, and therefore, the Companies request that the Department allow them to continue implementation of SERP (id. at 14-15).

The Companies assert that SERP is extremely cost-effective, with a benefit/cost ratio of approximately 3.0, and that the Department has strongly supported the participation in SERP by other Massachusetts electric companies (id. at 14). The Companies also note that participation in SERP is available only to electric companies, and therefore, if the Companies do not implement the program their customers would lose the opportunity to participate (id.).

The Companies stated that they would ensure that participation in SERP would not cause them to increase conservation charges above the levels that were determined to be acceptable by the Department in D.P.U. 91-234-A (id.). Specifically, the Companies would fund SERP expenditures only with "available funds" for 1994, 1995 and 1996 that are not

paid to DSM RFP award group developers, and would extend payments to subsequent years if necessary (id.).

2. Positions of the Parties

a. SESCO

SESCO argues that the Companies' implementation of SERP would reduce the dollars available to successful bidders in the DSM RFP (SESCO Reply Brief at 7). SESCO also contends that SERP was part of the Companies' proposal in the DSM RFP, which was not selected to be in the award group, and that the Companies should not be allowed to interject in the award group a part of their bid after the DSM RFP was closed to new proposals (id.). SESCO maintains that to approve SERP would violate all of the provisions in the RFP (id.).

SESCO also asserts that the Companies' proposal to not recover SERP program expenditures on a performance basis violates the objectives of the IRM process and makes meaningless any claim that the program is cost-effective (id.). Finally, SESCO argues that a separate consideration and preapproval of SERP would undermine the IRM process and discourage bidders from participating in the IRM process (id. at 7-8).

b. The Companies

The Companies argue that they have pursued involvement in SERP with the solid support of important public interest groups, regulators and legislative leaders (Companies Brief at 20). The Companies contend that SERP is highly cost-effective and provides significant environmental benefits (id. at 21). The Companies maintain that because participation in the program is limited to electric companies, their implementation of the program is essential to prevent substantial lost opportunities (id.). The Companies also argue

that they propose to fund SERP by utilizing "available funds" only (i.e., funds within the budget caps not paid to award group bid proposers), and therefore, the program will not impede the full implementation of the DSM programs operated by successful bidders (id.).

3. Analysis and Findings

The Department recognizes that the SERP program is important because (1) it targets a significant lost opportunity in the residential customer sector; (2) it is nationally recognized as a major factor in changing the appliance efficiencies in the refrigerator marketplace; (3) it is available only to electric companies; and (4) it would provide significant cost-effectiveness benefits to ratepayers. Because SERP is available only to electric companies, the Department rejects the arguments set forth by SESCO that inclusion of SERP in the award group would undermine the IRM process and discourage bidders from participating. Further, because the Companies would fund SERP expenditures with the "available funds" for 1994, 1995 and 1996 that are not paid to DSM RFP award group developers, the Department finds that implementation of the program will not subject competitively procured DSM programs to reduced funding. The Department also notes that participation in SERP is not unlike the Companies' implementation of the conservation voltage regulation ("CVR") program. That program was specifically excluded from the DSM RFP solicitation process because the Department determined that CVR was less conducive to implementation by an outside party secured through an RFP.[23] D.P.U. 92-218 at 17-18 (1993).

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[23] The Companies requested preapproval to recover costs associated with a program that included SERP participation as part of their filing in D.P.U. 92-218. The Department, however, dismissed the Companies' filing in that case and endorsed the procurement of DSM resources through a competitive process (id.).

Finally, the Department finds that SERP, unlike the appliance recycling programs at issue in Section II.C.2.a, above, is exclusively market-driven, and therefore, would be an allowed exception to the comprehensiveness threshold. Accordingly, the Department approves the inclusion of SERP in the Companies' resource plan subject to review in Phase IV of this proceeding.

E. Continuation of Existing DSM Programs

The Companies currently are implementing two residential programs (Residential Hot Water/General Use, Residential Electric Space Heat) that were preapproved in D.P.U. 91-80, Phase II-A (Exh. C-III-1, at 13). The Companies proposed to continue these existing DSM programs until the DSM RFP award group bidders begin project implementation (id.). The Companies indicated that field implementation services associated with the Companies' DSM programs are anticipated to continue approximately through the third quarter of 1994 (id.). The Companies request that the Department approve their proposal so as to secure a smooth transition to the competitively procured programs (Companies Brief at 20).

The Department finds that the Companies' proposal will provide continuity of service to their residential ratepayers consistent with our Order in D.P.U. 92-218, at 18 (1993), and therefore approves it.

F. Blackstone Street Station

1. Introduction

In Phase I of the Companies' IRM proceeding, the Companies proposed to remove Blackstone Street Station ("Blackstone") from their inventory of supply-side resources for

purposes of calculating resource need.[24] The Department found, based on the Companies' presentation, that it was appropriate to exclude Blackstone from the resource inventory, and directed the Companies to present an evaluation of the system costs that could be anticipated (1) with Blackstone included in the resource plan, and (2) with Blackstone excluded from the resource plan.[25] D.P.U. 91-234, at 68-69. Based on this information, the Department stated that it would determine whether it would be appropriate to cease making expenditures to support the operation of Blackstone. Id. Pursuant to the Department Order in D.P.U. 91-234, the Companies submitted an analysis of Blackstone coincident with their IRM Phase III filing.

2. Companies' Proposal

The Companies stated that Blackstone has been fully depreciated, and that the only costs incurred are routine operating and maintenance ("O&M") costs, energy costs, and wheeling charges (Exh. C-III-4, at 2). The Companies contended that the costs to ratepayers of generating electricity from this unit are low because of the benefits realized through steam sales (id.). The Companies reported that Blackstone's cogeneration potential has recently increased, and that steam sales are expected to continue well into the future pursuant to existing long-term contracts with steam customers (id.). Therefore, the Companies indicated

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[24] Constructed in 1901 as an electric generating facility, Blackstone has been operating as a fossil-fuel steam cogeneration facility since 1931, with a total capacity rating of 18 MW. Blackstone is one of two electric generating stations owned by Cambridge that are located in its service territory (Exh. C-III-4, at 1).

[25] The Companies assumed a retirement date of December 1993 for the Blackstone units, although they indicated that they had no plans to remove those units from service (Exh. C-6, at 1).

that significant benefits to ratepayers accrue through the sale of steam generated at Blackstone to the Steam Company's steam customers (id.). The Companies stated that, in addition to the economic costs and benefits presented in this analysis, there are transmission and distribution reliability benefits associated with keeping Blackstone in service (id.).[26] The Companies stated that should substantial additional expenditures be necessary to continue the operation of Blackstone, a reevaluation would be performed at that time (id. at 5).

3. Positions of the Parties

a. The Attorney General

The Attorney General contends that Blackstone's capacity should be considered part of the Companies' resource inventory until negotiations and investigations with regard to the future availability of external supply services are completed (Attorney General Brief at 3). The Attorney General states that at that time the Department should direct the Companies to file a plan including all cost-effective supply resources in its February 1995 IRM filing (id.). The Attorney General also states that the Companies' continued monitoring of the cost-effectiveness and performance attributes of Blackstone's operation is crucial (id.).

b. The Companies

The Companies contend that the analysis of Blackstone confirms the units' continuing economic and reliability benefits to customers (Companies Brief at 23-24). Accordingly, the Companies request that the Department accept the findings of the Companies as to the

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[26] The reliability of supply services within the Cambridge system is dependent upon the availability of a number of supply sources (Exh. C-III- 4, at 2). An existing contract for external supply services at Boston Edison Company's Somerville substation is currently under review, with loss of this supply as a potential outcome (id.).

appropriateness of continuing expenditures to support the operation of Blackstone (id.).

4. Analysis and Findings

The Companies have contended that there exist system reliability benefits in the continued operation of Blackstone. However, the Companies have not supported continued operation of Blackstone based on reliability benefits; therefore, the Department makes no finding on this issue.

The Companies presented an evaluation of system costs under two scenarios: (1) the base case, which assumes that Blackstone remains in service through the year 2005; and (2) the alternate case, which assumes a retirement date of January 1, 1995. In both scenarios, the system production costs are calculated using the EGEAS production costing model, and the future capacity costs are the projected costs of adding generic units when the system has a need for capacity. For the base case, other costs that are presented are the projected O&M expenses. In the alternate case, additional wheeling charges as well as replacement capacity costs are presented.

In each year of the analysis through 2005, the costs of retiring Blackstone exceed the costs of Blackstone remaining in service. The Companies' presentation in Tables 2A, 2B and 3 of Exhibit C-III-4A present clear evidence that Blackstone represents a cost-effective asset in the Companies' resource portfolio. For purposes of this proceeding, the Department finds that, based on the economic analysis presented in Exhibit C-III-4A, there are continued economic benefits to ratepayers with Blackstone remaining in service. Accordingly, it would be appropriate to continue making expenditures to support the operation of Blackstone consistent with the levels identified in the Companies' cost-effectiveness analysis.

Nevertheless, in keeping with the Companies' suggestion and as with all generating units, it would be appropriate to occasionally reevaluate the economic viability of continued operation of Blackstone, particularly if significant expenditures are encountered in the future. Further, the Department makes no finding related to the ratemaking treatment of any future expenditures, whether rate based or O&M expenses.

G. Conclusions on Proposed Resource Plan

The IRM regulations specify that the proposed resource plan shall be approved if found to comply with 220 C.M.R. §§ 10.00 et seq. Specifically, the proposed resource plan represents the coordination of the proposed award group with an electric company's existing resources and its resource need as identified in the Phase I review.

The Department has found that, other than the screening of the proposed appliance recycling programs, the Companies have evaluated all proposals in a manner consistent with the requirements of the IRM regulations and the DSM RFP issued as a result of the Department's Order in Phase I. The Department has also found that, other than appliance recycling programs, the Companies' award group represents the mix of resources that has the likelihood of resulting in a reliable supply of electrical service at the lowest total cost to society consistent with the Companies' DSM RFP. The Department finds that the Companies proposed award group was adequately coordinated with the Companies' existing resources and resource need calculation, and therefore, approves the Companies' proposed resource plan as modified by this Order.

III. COST RECOVERY METHODOLOGY

In D.P.U. 91-234-A at 16, the Department required the Companies to solicit a level

of DSM resources reflecting preset budgets amounts based on conservation charge ("CC") levels approved by the Department in Cambridge Electric Light Company and Commonwealth Electric Company, D.P.U. 91-80 Phase Two-A (1991). D.P.U. 91-234-A at 17. In that proceeding, the Department approved a CC level capped at $0.0025 per KWH for the residential non-heating classes for each Company, and CC levels capped at $0.0045 per KWH for all other classes (i.e., residential heating, small general, medium and large general) for each Company.[27]

The IRM regulations require an electric company to provide all the information required for preapproval ratemaking treatment including detailed cost information, output price, and proposed method of cost recovery.[28,29] 220 C.M.R. § 10.05(2)(i). In its Phase III filing, the Companies submitted information on maximum total dollar outlays that will allow the Companies to secure a level of DSM resources that is consistent with the Department's rate continuity and short-term rate impact goals. In addition, the Companies submitted preliminary information on CC decimals (Exhs. DPU-III-18; DPU-III-18A). The

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[27] The CC level caps established in D.P.U. 91-234-A cover all DSM costs, including program design and implementation costs, administrative costs, contractor costs and lost base revenues.

[28] The Department notes that any electric company seeking approval of DSM programs should, in its filing to the Department, also include CC rates and bill impacts that would result from implementation of the DSM programs as proposed based on the best information available. 220 C.M.R. § 10.05(2)(k).

[29] The IRM regulations also state that for each DSM resource for which the Company requests ratemaking treatment to compensate for revenue erosion, the electric company shall provide sufficient documentation to demonstrate that the performance of the DSM resource will result in revenue erosion that adversely affects the company's revenues in a significant, quantifiable way. 220 C.M.R. § 10.05(2)(j).

Department finds that the cost recovery information submitted by the Companies is consistent with the requirements of the IRM regulations. The Department does not make specific findings on the proposed cost recovery methodology or CC rates in this Order. The Department directs the Companies to file final CC rates and supporting documentation consistent with the schedule approved by the Department. At that time, the Department will fully investigate and rule on all aspects of the Companies' proposed cost recovery methodology associated with DSM program expenditures and related costs, including the lost base revenue calculation.

IV. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That the petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval of a proposed resource plan and award group filed with the Department on April 1, 1994, and supplemented on May 5, 1994 is approved subject to the modifications presented herein; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company shall comply with all directives contained herein; and it is

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company shall submit a compliance filing consistent with the provisions of this Order on or before June 3, 1994.

By Order of the Department,

_____
Kenneth Gordon, Chairman

_____
Barbara Kates-Garnick, Commissioner

_____
Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).